

23 CV 0394-SWS



Revised 03/06 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A CIVIL COMPLAINT IN FEDERAL COURT
(Non-Prisoner Context)

All material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.

1. CAPTION OF ACTION

A. Full Name of Plaintiff: *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application or the only plaintiff to be considered will be the plaintiff who filed an application.*

Joshua James Lukasik

-vs-

B. Full Name(s) of Defendant(s) *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. Add a separate sheet, if necessary.*

1. Anthony J. Annucci (NYSDOCCS)/ A.C.
 2. MR. GERARD JONES (Cayuga C.F. superintendent)
 3. Letitia James (N.Y.S. ATTORNEY GENERAL) ATTORNEY
 for defendants

4. _____
 5. _____
 6. _____

2. STATEMENT OF JURISDICTION, VENUE and NATURE OF SUIT

*All of these sections **MUST** be answered*

Identify the basis for federal Court jurisdiction over your claim, such as that the United States government is a party to the action, all the parties reside in different states and therefore you claim diversity jurisdiction, or the claim presents a federal question or arises under federal law.

A. Basis of Jurisdiction in Federal Court: A NEW YORK STATE Entity is a party in this proceeding and a claim filed and heard at the state level would be unfair and unjust and the federal venue is appropriate.

State why the Western District of New York is the proper venue for this action, such as that your claim arises in or the defendant resides in the 17 westernmost counties of New York State.

B. Reason for Venue in the Western District: petitioner resides in western district court and closest possible federal court house to be the venue for this action.

Identify the nature of this action, such as that it is a civil rights claim, a personal injury or personal property (tort) claim, a property rights claim, or whatever it is.

C. Nature of Suit: a civil lawsuit against N.Y.S.D.O.C.C.S. for negligence while in custody, along with personal injury as a direct result of said negligence, and strict liability& emotinal distress.(TORT CLAIM)

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION **NOTE:** *To list additional plaintiffs, use this format on another sheet of paper.*

Name of First Plaintiff: Joshua James Lukasik

Present Address: 335 Grider street unit # 7

Buffalo New York 14215

Name of Second Plaintiff: _____

Present Address: _____

DEFENDANT'S INFORMATION **NOTE:** *To list additional defendants, use this format on another sheet of paper.*

Name of First Defendant: MR. GERARD JONES

Official Position of Defendant (if relevant): SUPERINTENDENT for NYSDOCCS Cayuga CORR. FACILITY

Address of Defendant: CAYUGA CORRECTIONAL FACILITY

Rt.38A Moravia N.Y. 13118

Name of Second Defendant: Anthony J. Annucci

Official Position of Defendant (if relevant): N.Y.S. DEPT. OF CORRECTIONS AND COMMUNITY SUPERVISION ACTING COMMISSIONER

Address of Defendant: Department of Corrections and Community Supervision

State Campus Building. 9 1220 Washington Ave Albany, New York, 12226

Name of Third Defendant: Letitia James

Official Position of Defendant (if relevant): NEW YORK STATE Attorney General (Attorney for defendants)

Address of Defendant: office of the New York State Attorney General
The Capitol
Albany NY 12224-0341

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes No

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes No

If not, give the approximate date it was resolved. _____

Disposition (check those statements which apply):

Dismissed (check the statement which indicates why it was dismissed):

- By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

- plaintiff
- defendant.

5. STATEMENT OF CLAIM

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, just tell the story of what happened and do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

A. FIRST CLAIM: On (*date of the incident*) FEBUARY, 11 2023,

defendant (*give the name and (if relevant) the position held of each defendant involved in this incident*) _____

GERARD JONES SUPERINTENDANT NYSDOCCS CAYUGA CORRECTINAL FACILITY,

Anthony J. Annucci ACTING COMMISISONER NYSDOCCS (NEGLIGENCE, PAIN & SUFFERING, EMOTIONAL DISTRESS.)

did the following to me (*briefly state what each defendant named above did*): (2/11/23) I was beaten for nearly 3 minutes straight by another inmate all within 10 feet of a correctional officers post which is used to monitor and stop any acts of violence by inmates during big movements like lunch run, program run etc. This post was vacant at the time of the assault. the perpetrator was able to not only punch me numerous times but was able to kick me in the face over 10 times causing serious and life debilitating injuries. the superintendent was negligent and could have prevented a majority of these injuries if said post was filled and the facility was properly staffed. the superintendent & his staff were negligent and failed to keep me safe. and from this incident I sustain multiple jaw fractures, broken mandible, orbital fractures, loss of teeth, brain trauma, PTSD. The federal basis for this claim is: defendant owed me a "duty of care", that that duty was breached, & I have sustained foreseeable harm & economic loss as a consequence of the negligence. Violations also pertain to the US constitution and federal prison laws

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:* I would like the court to issue relief as it sees fit and award the plaintiff in this claim monetary value in US currency of at least \$100,000 for injuries sustained from Mr. Jones negligence, pain and suffering and emotional distress and PTSD.

B. SECOND CLAIM: On (*date of the incident*) **FEBRUARY, 11 2023**, defendant (*give the name and (if relevant) position held of each defendant involved in this incident*) _____

did the following to me (*briefly state what each defendant named above did*): _____

The federal basis for this claim is: _____

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:* _____

If you have additional claims, use the above format to set them out on additional sheets of paper.

6. SUMMARY OF RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

The relief requested from this claim is that I be compensated financially for the nature of the issue, for pain and suffering, post traumatic stress disorder, loss of wages, permanent facial deformities sustained during the assault and not limited to. This assault could have been prevented by the NYS department of corrections so I am requesting compensation of at least \$250,000 in US funds I am also asking that the proper people be disciplined for their actions in regards to this assault and a follow up of criminal charges if suitable.

Do you want a **jury trial**? Yes No

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4/24/2023
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

subsequent papers filed with the Court

Signature(s) of Plaintiff(s)

Signed before me this
27 day of April 2023

C in Vnt

Erin M Vest
Notary Public, State of New York
Reg. No. 01VE6357877
Qualified in Erie County
Commission Expires May 1, 2025

CIVIL COVER SHEET

23 CV 0394

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Joshua Lukasik

DEFENDANTS

Annucci, Et Al

(b) County of Residence of First Listed Plaintiff Erie
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Pro Se

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/>
Blank			Blank		
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5

Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input checked="" type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Fraud		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 391 Truth in Lending		<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 392 Other Personal Property Damage		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 395 Death Penalty		<input type="checkbox"/> 850 Securities/Commodities Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/ Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/ Disabilities - Other	<input type="checkbox"/> Other:		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<i>2 (320 & 325)</i>	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
IMMIGRATION				
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 250,000
(\$ 250,000.00)

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

NO NE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

Joshua Lukasik

5/4/23